



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

Told

REPLY TO
ATTENTION OF:

CERE-MM (405-80)

29 September 1995

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revision of Policy and Procedures for Outgranting AMC
Industrial Facilities

1. Reference memorandum, CERE-MM, dated 16 December 1994, Subject: Revision of Policy and Procedures for Leasing Industrial Facilities

2. As a result of referenced memorandum, we have received a number of comments regarding the policy.

3. The following revised procedures will be set forth in the Technical Manual supporting revised AR 405-80. However, to facilitate implementation of the revised procedure, this policy letter supplements AR 405-80, 1 February 1979 and is effective immediately. Referenced memorandum should be disregarded.

4. GENERAL

a. Outgranting of industrial facilities requires the approval of AMC, Real Estate Management Division (AMCEN-R). The AMC will be the final authority for approving the availability of real property at industrial installations. Authority to review, coordinate, staff, approve and forward ROAs for real estate transactions may be redelegated to subordinate commands by HQ, AMC. Redelgation is predicated upon demonstrated competency of trained and experienced realty specialists at the subordinate command. AMC will also notify the Deputy Assistant Secretary of the Army (Installations and Housing) if the action will have any adverse impact on the installation.

b. When industrial facilities are to be offered for outgranting, either a conceptual Report of Availability (ROA), without full environmental documentation, or a ROA will be approved by AMC. If only a conceptual ROA was approved, the USACE District Commander will advertise the availability of the site and request non-binding expressions of interest. A Notice of Availability will include explicit instructions that the grantee will be required to submit, without cost to the Government, appropriate environmental documentation for Army Materiel Command (AMC) approval. The documentation must detail the environmental impact of the intended operation and how that impact could be mitigated and any other known environmental deficiencies which could be corrected.

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c. Prior to any public notices, a Congressional report pursuant to 10 USC 2662, should be completed. The SA must report to the Armed Services Committees (ASC) proposed leases or licenses of military real property located in the US, its territories or its possessions, when the estimated annual fair market rental value exceeds \$200,000. The threshold rental is based on estimated annual fair market rental value, regardless of the actual cash rental collected. This requirement is not applicable to permits, easements or leases for agricultural purposes. The report is prepared by the appropriate USACE District Commander and forwarded to HQUSACE (CERE-L) for submission to the committees. DASA(I&H) will review the Title 10 disposal report prior to submission to Congress. The Title 10 report may be submitted prior to completion of environmental and other supporting documentation for the final ROA.

5. PREPARATION OF REPORT OF AVAILABILITY

a. Any requested or proposed non-Army use of installation lands or facilities must be reviewed to determine if it is in conformance with the installation master plan and will not interfere with the installation mission. That decision is documented by a ROA, which provides the information necessary for review of the proposed use and preparation of the real property outgrant which will authorize the proposed use. Reports of Availability for proposed outgrants are initiated and prepared at the Installation level.

b. The ROA should be prepared as soon as possible in response to request for non-Army use. When land or facilities are being made available for competitive bidding, the ROA should be prepared as far as possible in advance of the date of availability.

c. An informational copy of the ROA should be furnished to the appropriate USACE District Commander when it is forwarded for approval; however, the property is not available for non-Army use until the ROA has been approved by the appropriate command level.

d. Where concept approval is required or desired, a ROA will be prepared using the attached format. The Installation Commander (IC) or designee, should complete as much information as is available; however, complete data is not required, especially Section C. The conceptual ROA should be staffed through command channels to the same level as the final ROA will require. Irrespective of the individual preparing the ROA, the ROA must be signed by the IC.

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e. The approved format for preparation of ROA is attached. There are four parts to this document. The first page is titled "Determination of Availability". This is the approval document for the entire ROA. The ROA is made up of three sections -- A. General; B. Preliminary Procedures; and C. Environmental and Cultural Considerations. Instructions on completion of these documents are included. All ROAs are to be prepared using this format and all blanks should be completed as appropriate. Local reproduction is authorized. AMC may add an additional section addressing MACOM specific questions.

f. In addition to the data furnished in the report form, the following information will be provided.

(1) An estimate of whether the annual value of the outgrant will exceed \$200,000, giving the source of information. The IC should consult with the USACE District Commander for the determination of the rental value. The IC is not authorized to obtain appraisals from any alternate source.

(2) In the rare instance when property is being made available for speed contests or off-road vehicle use, the ROA will require the following conditions to be included in the outgrant.

(a) The authorized use will involve no expense to the Army.

(b) A "hold harmless provision" and a requirement for the grantee to obtain sufficient insurance coverage that, in the opinion of the District Commander, will protect the Government against liability or damage claims

(i) A requirement that the grantee will repair all damage to Government property and will post a satisfactory bond to insure that.

(ii) A provision that no Army personnel or equipment will be involved in the preparation or conduct of the authorized activity.

(iii) The grantee will furnish adequate plans for such matters as security, traffic control, safety, trash collection and disposal.

(iv) The authorized use will not be permitted to cause any adverse effect on the operation or mission of the installation.

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6. ENVIRONMENTAL, CULTURAL AND HISTORICAL FACTORS

a. DA will not authorize the use of real property, water or other natural resources when the use conflicts with the goals and intent of overall Federal policy on environmental quality. Environmental and cultural considerations in real property management actions are constantly becoming more important, receiving greater scrutiny, and are the subject of rapidly changing guidance. It is extremely important that the most current versions of all applicable laws and regulations be consulted and complied with before taking any action that will have an effect on the environment or on cultural resources. All documents should be reviewed by an appropriate environmental office. Although the conceptual ROA does not include complete environmental information, the ROA must be finalized with complete information prior to execution of the outgrant.

b. In order to provide uniform consideration of environmental factors in the outgranting of Army real property and to assure Army's compliance with the various environmental laws, the following procedures shall be followed:

(1) Each ROA for a proposed grant will contain documentation of compliance with environmental, cultural and historical requirements prepared by appropriate environmental specialist. The ROA will also set out any site specific conditions to be included in a proposed grant to provide protection for any environmental, historical and cultural resources identified in this process.

(2) The environmental requirements with which Army must comply fall into three general groups; they are to be addressed separately and specifically: (i) the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321, et seq.); (ii) Other environmental laws, compliance with which is required notwithstanding NEPA; and, (iii) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); 42 USC 9601 et. seq., especially 42 USC § 9620 (h).

(3) Compliance with NEPA:

(a) Depending on the impacts of the proposed action, the environmental review required by NEPA will be either: (i) A Record of Environmental Consideration (REC); (ii) An Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI); or (iii) an Environmental Impact Statement (EIS). There may also be cases where both an EA and an EIS are prepared. Reference AR 200-1 and AR 200-2.

(b) When an action qualifies as a Categorical

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Exclusion (CX), a REC, following the format discussed in AR 200-2, shall be included, along with a citation to the section of AR 200-2 that provides for this type of action to be a CX.

(4) To show compliance with environmental laws whose requirements are not subsumed in NEPA, the transmittal assembly should indicate if there has been compliance with any of the following statutes and Executive Orders which are applicable. It should be noted that some of the following are applicable in most cases while others may only be rarely used.

(a) The National Historic Preservation Act, 16 U.S.C. § 470, et seq.;

(b) The Coastal Zone Management Act, 16 U.S.C. § 1451, et seq.;

(c) The Endangered Species Act, 16 U.S.C. § 1531, et seq.;

(d) The Clean Water Act, as amended, 33 U.S.C. § 1251, et seq., including the Section 404 wetlands permitting process and Section 311;

(e) The Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1271, et seq.;

(f) The Clean Air Act, as amended, 42 U.S.C. § 7401, et seq., including Section 176 (c), 42 U.S.C. § 7506(c). General Federal conformity;

(g) Antiquities Act, 16 U.S.C. § 431, et seq.;

(h) Archaeological and Historical Preservation Act, as amended, 16 U.S.C. § 469, et seq.;

(i) American Indian Religious Freedom Act, as amended, 42 U.S.C. § 1996;

(j) Archaeological Resources Protection Act, as amended, 16 U.S.C. § 470aa-11;

(k) Native American Grave Protection and Repatriation Act, 25 U.S.C. § 3001, et seq.;

(l) Abandoned Shipwreck Act of 1987, 43 U.S.C. § 2101, et seq.;

(m) Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. § 1431, et seq.;

(n) Bald Eagle Act, 16 U.S.C. § 668; Migratory Bird Treaty Act, 16 U.S.C. § 703; Migratory Bird Conservation Act, 16 U.S.C. § 715, et seq.;

(o) Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.;

(p) The Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, et seq., (amendments include the Resource Conservation and Recovery Act (RCRA));

(q) Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 135, et seq.;

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- (r) The National Environmental Policy Act, 42 U.S.C. § 4321, et seq.;
 - (s) The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et seq.;
 - (t) Noise Control Act of 1972, 42 U.S.C. § 4901, et seq.;
 - (u) Asbestos Hazardous Emergency Response Act, 15 U.S.C. § 2641, et seq.;
 - (v) River and Harbor Act of 1899, as amended, 33 U.S.C. § 403, et seq.;
 - (w) Submerged Lands Act, 43 U.S.C. § 1301, et seq.
 - (x) any other federal or state laws, rules or regulations which are known to impact the property.
- (5) Compliance with CERCLA, see especially Section 9620 (h) and "Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property", 40 CFR Part 373:
- (a) Certain outgrants require compliance with the notice requirements of CERCLA. For those actions, compliance with CERCLA will be documented by including in each ROA for the outgranting of real property, an approved Environmental Baseline Study (EBS) or approved Preliminary Assessment Screening (PAS) prepared in accordance with AR 200-1. The EBS/PAS bridges between CERCLA and NEPA and is integrated into a REC or the affected environment portion of the EA or EIS, as appropriate.
 - (b) If it is determined that no activity took place on the property involving amounts of a hazardous substance above the CERCLA threshold levels, then language substantially in accordance with that found in Title 41 Code of Federal Regulations, Chapter 101-47.202-2 (b) (10) (iii) should be included in the EBS/PAS. A EBS/PAS is prepared for a specific action (e.g. the outgranting of a particular parcel of land) and should not be confused with Environmental Inventories of a generalized nature such as the Environmental Compliance Assessment System (ECAS) for military installations.
 - (c) AR 200-1 is currently under revision. An EBS/PAS is required for leases and disposals to private parties and transfer to other agencies. An EBS/PAS may be prepared for any outgrant action, if desired.
 - (d) When considering compliance with CERCLA and RCRA, federal agencies are legally obligated to follow state law and procedure implementing these laws, and that state law under an EPA approved RCRA program may determine the definition of, for example, "hazardous substances".
 - (e) The Environmental Protection Agency has issued regulations implementing Section 9620, see Title 40, Code of

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Federal Regulations, Part 373. The regulations do not diminish the all inclusive nature of the language of the act.

(f) The records search required by CERCLA is to be a complete search of the agency records. Therefore, the Installation will provide as an attachment to the ROA, written confirmation of such a search, from any element that might have records indicating if the CERCLA "threshold" on the quantity of hazardous substances has been crossed.

(g) A site inspection is only required if the records search indicates the need for further investigation.

(h) When a EBS/PAS is completed pursuant to an outgrant it should be attached to the outgrant as an exhibit. Upon expiration, revocation or relinquishment of the outgrant, another EBS/PAS will be prepared which will document the environmental condition of the property at that time. A comparison of the two documents will assist in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the restoration provision of the outgrant.

(6) Care should be taken to ensure that compliance with the environmental statutes is adequately documented both to prevent potential financial liability to the Government, and because several of the laws (e.g. RCRA and CERCLA) have provisions whereby individual employees of industry and government may be held personally liable for their acts or omissions that violate the laws. Such liability may be both civil and criminal depending on the facts of the case.

(7) No outgrant of Army real property or interest therein shall be processed or forwarded to higher echelons for approval that does not comply with this guidance.

(8) When the USACE District Commander receives the approved ROA with attached environmental documentation, the IC will be queried to determine if the documentation is still adequate. If any significant disposal, storage or release has taken place since the EBS/PAS and the ROA were prepared, then the IC will update the reports.

7. APPROVAL OF REPORTS OF AVAILABILITY

ROAs will be submitted through command channels to the Commander, Army Materiel Command. The DOA will be forwarded by AMC Commander or as delegated under paragraph 4.a. to the appropriate USACE Division Commander for action.

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8. USACE DISTRICT RESPONSIBILITIES

a. During the preparation of the conceptual ROA, the IC should consult with the appropriate USACE District Commander to determine if the proposed outgrant action will exceed the reporting requirements of 10 USC 2662.


b. Upon receipt of a conceptual ROA exceeding the Title 10 threshold, the USACE District will prepare the appropriate documentation and forward the report through USACE command channels to HQUSACE (CERE-M) for submission by CERE-L to the ASCs.

c. Concurrently with the Title 10 submission, the District will initiate actions for the preparation of the appraisal report or opinion of value. The appraisal should be structured to accommodate any revisions/additions resulting from command review of the ROA. The appraisal should be finalized as soon as possible after receipt of the approved ROA. Environmental actions, maintenance, repair, restoration and improvements may be used as offsets to rental.

d. After receipt of all required approvals, the District, in conjunction with the IC, may commence negotiations.

FOR THE DIRECTOR:

Encl


S. JANICE HOWELL
Chief, Management and Disposal
Division
Directorate of Real Estate

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U.S. ARMY MATERIEL COMMAND, ATTN: AMCEN-R, 5001 EISENHOWER
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OFFICE OF THE CHIEF OF ENGINEERS (PENTAGON), ATTN: DAEN-ZC
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT,
ATTN: DAIM-FDP-A, 600 ARMY PENTAGON, WASH, DC 20310-0600
U.S. ARMY FORCES COMMAND, ATTN: AFPI-ENP, FT MCPHERSON, GA
30330-6000
U.S. ARMY TRAINING AND DOCTRINE COMMAND, ATTN: ATBO-GPL,
FT MONROE, VA 23651-5000

Appendix C Instructions

The Availability formats have been set up so that different sections can be prepared and staffed separately and signed by different Army elements, if required. Flexibility is essential, yet still yielding a final product which can be staffed and finally put in the outgrant file. It is becoming more and more important to have a document that contains all the pieces to the process and that shows that what issues were considered.

The Determination of Availability would be signed by the official with the delegated authority to approve the outgrant, whether the Installation, the MACOM Commander, or ASA(I,L&E).

Section A.

Section A of the ROA would usually be the starting of the outgrant process. If the outgrant is the culmination of the Master Plan process, then this section would pull information from the Master Plan and installation data. If a private party has requested the outgrant or outgrant expansion, then the office which takes the request would fill in as much information as is available and submit it for further processing. This section would usually be done by the Installation.

Section B.

Section B contains general preliminary information.

Section C.

Section C would be added to Section A by the appropriate environmental office or offices with expertise in the various areas. This section could be divided into more than one subpart if the installation organization involves several offices which each need to sign a portion.

DETERMINATION OF AVAILABILITY

1. The attached Report of Availability (ROA) and its findings has been reviewed.
2. I have determined that the intended use of this property as set out in the Attached Report of Availability is in the public interest or in the interest of national defense and is consistent with delegated authorities and Government regulations. (The use will further the installation mission or project purpose.)
3. I have determined that the proposed use is not a potential embarrassment to the Army.
4. I have determined that the property is not excess to the overall installation purpose and is available for temporary use. (PROVIDE JUSTIFICATION WHERE NECESSARY).
5. The proposed use as a

is approved subject to (state any modifications to the restrictions stated in the Report of Availability which must be placed in the outgrant document).
6. Coordination:
(list)
7. It has been determined that the property is available for the proposed use with the restrictions as stated in the Report of Availability (and as added above) and may be outgranted in accordance with applicable laws, rules and regulations.

Date

(Approving Official)

REPORT OF AVAILABILITY

A. GENERAL:

1. Installation: (Use official name from the installation inventory)
2. Proposed use:
3. Recommended term of outgrant: Proposed for ____ years.
Start date, if applicable: _____
4. Use requested by:
5. General property description/characteristics of the property:
Acreage _____; Land character _____.
6. Are Government buildings and improvements included in the area: ☐ Yes ☐ No.

If yes, give details on buildings and improvements and attach copy of floor plan, if applicable:

Building Identification No. _____,
Square footage outgranted/percentage of building
_____,'
Condition of the facilities _____.
7. Explain why the property (land and/or building(s)) is not excess: _____
8. United States property interest:

<input type="checkbox"/>	<input type="checkbox"/>	fee simple title
<input type="checkbox"/>	<input type="checkbox"/>	easement
<input type="checkbox"/>	<input type="checkbox"/>	in-lease
<input type="checkbox"/>	<input type="checkbox"/>	other.

9. Army interest:

- ☐ direct control
- ☐ permit from a Federal Agency
- ☐ withdrawn from the public domain.

10. Type of jurisdiction:

- ☐ exclusive
- ☐ concurrent
- ☐ proprietary
- ☐ partial

11. If other than proprietary, is jurisdiction to be relinquished?
☐ Yes ☐ No, Explain.

12. Are utilities available from public utility companies?
☐ Yes ☐ No Will utilities or other support services be
provided by Army on reimbursable basis? ☐ Yes ☐ No

13. Destruction, relocation, and replacement of Government
facilities:

☐ I Certify the proposed use will not require the
destruction, relocation, or replacement of any Government
facilities.

☐ The following information is provided with regard
to the destruction, relocation, or replacement of any Government
facilities: _____

14. I certify that the grant of the proposed use will not
interfere with operation of the installation, or with contemplated
development and other activities as shown in an approved Master
Plan.

15. The following site specific recommendations are made as to
limitations, restrictions, or conditions to be included in the
grant to make the proposed use compatible with the operation of the
installation:

16. Safety issues and concerns, if any:

17. REMARKS - include any legal, policy, or mission factors you are aware of that may affect the proposed use of the property:

18. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE

[] APPROVED [] DENIED.

Date SIGNATURE
 Title

Encl 1. Maps showing the nearest project or installation boundary; acreage, character of land, and the number and type of improvements, if both land and improvements are included. If only building space is involved, give total square feet and describe the type of construction. Use existing maps whenever feasible.

REPORT OF AVAILABILITY

B. PRELIMINARY PROCEDURES:

1. STEWART B. MCKINNEY HOMELESS REQUIREMENTS:

☐ McKinney Act requirements do not apply to this action.

☐ McKinney Act requirements apply, necessary screening has been completed, and no interest was expressed.

2. INVENTORY AND CONDITION REPORTS:

☐ No Government improvements are included in the proposed outgrant, so an inventory and condition report is not required.

☐ Government improvements are included and an inventory and condition report is required/attached.

3. CONSIDERATION:

☐ Monetary consideration is not recommended for this action.

☐ USACE district is requested to determine full consideration.

☐ USACE district is requested to determine fair market value for the leased interest and for Offsets (In kind amounts) for the improvement, maintenance, protection, repair or restoration of the property leased as shown in the attached.

4. WAIVER OF COMPETITION:

☐ A waiver of competition is not recommended.

☐ A waiver of competition is recommended. Provide full justification and proposed grantee, if waiver is recommended.

5. Other applicable laws, regulations, MOA's, etc. requiring consideration for processing this action:

6. Special outgrant provisions:

7. Additional information that will assist in processing this application/action: _____

the threshold quantities. The CERCLA notice, pursuant to 42 USC § 9620(h), should be included in the outgrant document. Copy of the EBS/PAS is attached containing the details. Choose one:

a. Remedial actions have been taken so that the property is considered safe for the proposed use.

b. Remedial actions have not been taken. Provide details and justification for outgranting in the current condition. _____

13. REAL PROPERTY CONTAMINATED WITH AMMUNITION, EXPLOSIVES OR CHEMICALS.

☐ The property has been decontaminated using the most appropriate technology consistent with the proposed use of the property.

☐ Transfer is to another Federal agency for compatible use of surface de-contaminated real property, subject to the following limitations, restrictions and prohibitions concerning the use of the property, to ensure personnel and environmental protection: _____

☐ Access rights are reserved to implement any monitoring plan.

☐ Coordination with HQDA, DACS-SF and DAMO-SWS attached with the Land Disposal Site Plan (LDSP). Reference AR 385-64, "US Army Explosives Safety Program."

14. WASTE DISPOSAL (The Solid Waste Disposal Act, as amended; Resource Conservation and Recovery Act (RCRA)).

☐ The applicant will not generate, store, treat or dispose of hazardous waste.

☐ The applicant will generate, store, treat or dispose of hazardous waste. Choose the appropriate:

a. The applicant has obtained a hazardous waste identification number from EPA and, if applicable, the state.

b. The applicant has established records, waste management requirements, and a Spill Prevention Plan.

c. The applicant complies with requirements of 10 U.S.C. § 2692.

15. UNDERGROUND/OTHER STORAGE TANKS.

☐ There are no UST on the property and the applicant will not be installing tanks.

☐ There are no above ground storage tanks for fuel or other regulated substances and the applicant will not be installing tanks.

☐ There are UST on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: _____ Yes _____ No. Construction of proposed tanks have been certified for such compliance: _____ Yes _____ No.

☐ There are above ground storage tanks for fuel or other regulated substances on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: _____ Yes _____ No. Construction of proposed tanks have been certified for such compliance: _____ Yes _____ No.

16. Are there improvements with Asbestos Containing Material (ACM)? ☐ No ☐ Yes, attach condition and type.

Are these improvements the type that children under age seven frequently inhabit? ☐ Yes ☐ No

17. Are there improvements constructed prior to 1978 which may contain lead-based paint or which have been determined to contain lead-based paint? ☐ No ☐ Yes, Attach survey results.

18. Are there other substances, such as Radon or PCBs?

19. CLEAN AIR ACT - FEDERAL CONFORMITY REQUIREMENTS

☐ This action does not require a written conformity determination in accordance with EPA's rule because:

☐ The installation is in an attainment area. The action conforms to the applicable State or Federal Implementation Plan.

☐ The action falls within an exemption in the rule. Attach documentation of the applicability of the exemption.